

Def. Doc. 2797

SURVIVAL OF AMBASSADORIAL IMMUNITY

Excerpts from: "The Law of Nations" by Herbert W. Briggs

***** the immunity for official acts is permanent.
Insofar as the member acts in his official capacity, his immunity confounds itself with that of the sending state itself, and depends, not upon the person of the representative, but upon the intrinsic nature of the act performed. International Law imposes upon the courts of the receiving state an incompetence *ratione materiae* in the case of public acts."

(Salm v. Frazier p. 384 - Immunities and privileges of agents)

***** (5) consequently, immunity for official acts survives the cessation of diplomatic character and functions, since it is not attached to the person of the agent but to the sending state itself."

Cf. also Musurus Bey v. Gadban (1894) 2 Q.B. 352;
Suarez v. Suzrez (1917) 2 Ch. D. 131 and (1918) 1 Ch. 176.

(Dickinson v. Del Solar p. 391 - Status and Functions of Consuls.)

Exh. 辛

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外交使節不可侵權の存續

ハーバード、ブリックス等「國際法」よりの抜萃、公的行爲の不可侵權は永久的のものである。使節が公的の資格を以て行動する限り、その不可侵權は派遣國自体の不可侵權と同種類のものである。それは駐外使臣その人に懸るものではなく、行はれた行爲の本質に依存するのである。公的行爲の場合、國際法はその證據の性質如何によつてその接受國の法廷に無能力を課するものである。

(サルム對フレイジア、第三八四頁「代行機關の不可侵權と特權」)

、、、(五)その結果、公的行爲の不可侵權は、それが代行機關の人に所屬しないで、派遣國自体に所屬してゐる以上は、外交國の性格と機能の停止以後に於ても存續するものである。一又、ムスラス、ベイ對ガドバン(一八九四年)高等法院裁判所記録第二編三五二、スウオレズ對スズレズ(一九一七)第二章D、一三一及(一九一八)第一章一七六を參照。(ドイツキンソン對デル、ソラー三九一頁「領事の身分と機能」)。

ERRATA SHEET

MUTO

6 November 1947

Def. Doc. 2800 -- Opening Statement

Page 1 - 8 lines from bottom, "Evidence will be offered," etc., eliminate entire sentence.

Page 5 - 7 lines from end of first paragraph, "as had been initially planned", will read, "as the result of careful study".

Def. Doc. 2589 -- IWAKURO affidavit

Page 2 - paragraph 3, eliminate sub-paragraphs A,B,C,D, and on page 3, sub-paragraph E.

Page 3 - sub-paragraph F, line 6: these two sentences will read, "Regarding the attitude of the Army as to the Tri-Partite Pact, it was remarkably different from the way in which TANAKA described it".

ERRATA SHEET

MUTO

4 Nov. 1947

Def. Doc. 2589, Affidavit of IWAKURO, Hideo:

Page 1, Para. 1, under "My Career", Line 7, "SHOWA (1939); and went over"
should read: "SHOWA (1939); was appointed Colonel in March of the same year;
and went over"

Page 1, under "My Career", Line 17, "in the Military Affairs Section"
should read: "in the Military Administration Section"

Page 4, Para. 5 A., Line 2, "of SHOWA). It was because" should read:
"of SHOWA), as an assistant of Ambassador NOMURA. It was because"